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# Recent Developments: Potomac Elec. Power Co. v. Smith: Maryland's Cap on Noneconomic Damages Rendered Constitutional in Wrongful Death Actions

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property distribution thirty days after the decree became enrolled, except for fraud, mistake, irregularity or clerical error. *Id.*

The court recognized that because there were other states that did not permit trial courts to reopen final divorce decrees, Congress could not have intended the USFSPA to override state law, even though Congress clearly intended USFSPA to be retroactive. *Id.* at 390-91, 564 A.2d 404-05. Although the legislative history of the USFSPA disclosed that final judgments could be reopened, the court reasoned that this disclosure merely reflected Congress' awareness that the law in the majority of states allowed a reopening of final judgments. *Id.* "On the other hand," the court stated, "there is nothing in the legislative history demonstrating that Congress intended to preempt state procedural law setting forth the grounds for reopening a final judgment." *Id.* at 391, 564 A.2d at 405.

Despite the USFSPA, military spouses divorced in Maryland between the period of the *McCarty* decision, June 26, 1981, and the effective date of the USFSPA, February 1, 1983, were dealt a severe blow by the *Andresen* decision. According to Maryland law, a court cannot redetermine marital property more than thirty days after a divorce decree becomes final. Thus, the decision in *Andresen* demonstrated that nothing short of fraud, mistake, irregularity, or clerical error can justify the reopening of a final divorce decree.

—Ellen W. Cobill

**Potomac Elec. Power Co. v. Smith:  
MARYLAND'S CAP ON  
NONECONOMIC DAMAGES  
RENDERED CONSTITUTIONAL IN  
WRONGFUL DEATH ACTIONS**

The Court of Special Appeals of Maryland in *Potomac Elec. Power Company v. Smith*, 79 Md. App. 591, 558 A.2d 768 (1989), held that Md. Cts. & Jud. Proc. Code Ann. section 11-108 (1989), a statute placing a cap on noneconomic damages, is constitutional as applied to a wrongful death action. Although the Maryland cap was found constitutional in the United States District Court for the District of Maryland, the Maryland courts had not yet addressed the issue.

Fifteen year old Chrisanthia Lambert was electrocuted by a downed power line owned and maintained by the Potomac Electric Power Company ("PEPCO"). The wire was hanging two or three feet above

a footpath that cut through a PEPCO right-of-way. PEPCO had knowledge that the footpath was regularly used by both adults and children. Prior to the incident, the wire had been held up by a cross arm attached to a utility pole. When one side of the cross arm snapped off, PEPCO, in violation of a statute, placed the wire on the other side of the cross arm. This second side eventually broke, resulting in the downed wire. Over a one month span, PEPCO had been warned on three separate occasions that the wire was down; yet, no corrective action was taken. Lambert was walking along the footpath when she came in contact with the downed wire. She died instantly as 7,600 volts of electricity were sent through her body.

Pursuant to their action for wrongful death, a jury awarded Lambert's parents, Doris Smith and George Lambert, \$500,000 in compensatory damages and \$7,500,000 in punitive damages. The judge then reduced the award of compensatory damages to \$350,000, the cap on noneconomic damages, set by section 11-108(b). Noneconomic damages include pain, suffering, inconvenience, physical impairment, loss of consortium, but do not include punitive damages. Md. Cts. & Jud. Proc. Code Ann. § 11-108 (1989). Both parents appealed the reduction.

The Court of Special Appeals of Maryland began its analysis of the cap by affirming the trial court's application of the cap to wrongful death actions. *Id.* at 623, 558 A.2d at 785. After discussing the legislative history and purposes of the statute, the court reasoned that the application effectuates the legislative intent in alleviating the liability/insurance crisis by limiting certain damage awards to \$350,000. *Id.* at 623, 558 A.2d at 784. "The fact that the cap does not expressly enumerate the types of personal injury actions within its ambit is a function of its breadth, not a limitation of its application." *Id.*

The court then turned to the issues of whether the cap violated various portions of the United States Constitution as well as the Maryland Declaration of Rights. Specifically, the parents argued that the cap violated their rights to a jury trial, due process and equal protection under the law. The court, after analyzing each issue, determined that the statute did not violate either the Maryland Declaration of Rights or the United States Constitution. *Id.* at 625-35, 558 A.2d at

786-96.

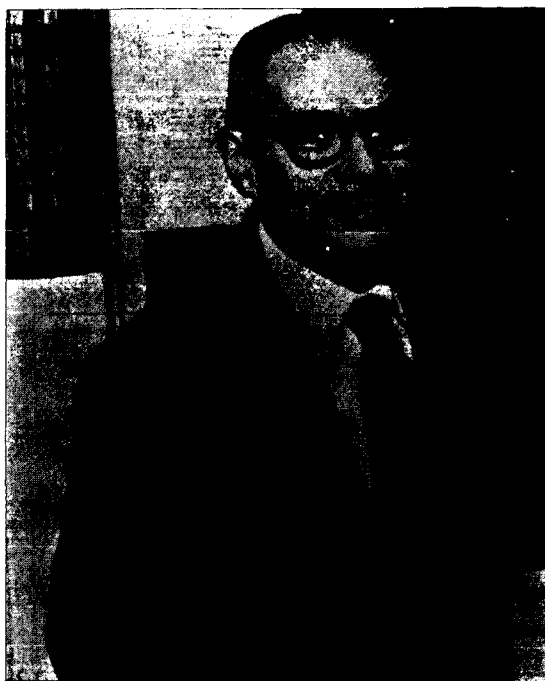
The parents contended that the application of the cap "invades the fact-finding province of the jury by restricting its ability to determine and fully assess damages." *Id.* at 626, 558 A.2d at 786. The court disagreed, stating that the wrongful death action is a statutory creation, and, as such, the legislature may limit and condition awards under such an action. *Id.* at 628, 558 A.2d at 787.

Next, the parents contended that a plaintiff whose recovery is so limited is denied access to the court and a full remedy at law because there are no alternative remedies to recover the full amount of the injury. *Id.* In dismissing this claim, the court reasoned that even with this cap, wrongful death beneficiaries are entitled to a greater remedy than provided prior to the enactment of the statute permitting wrongful death actions. Prior to the enactment of the wrongful death statute, a beneficiary had no remedy. *Id.* at 628, 630, 558 A.2d at 786, 788. Therefore, since the legislature created the remedy then it also could limit the award. *Id.*

Finally, the parents argued that because the cap limited an "important personal right," it should be tested under the equal protection analysis using the "heightened review" standard. *Id.* at 632, 558 A.2d at 789. The court again disagreed, holding that a recovery under a wrongful death action is not an "important personal right," in that it was only created twenty years ago. *Id.* at 635, 558 A.2d at 790. Instead, the court determined that the appropriate equal protection analysis was the rational basis test. *Id.* at 632, 558 A.2d at 787. Since the plaintiffs had not been able to produce any persuasive evidence that the statute, as applied, was unreasonable or arbitrary, the statute was held constitutional. *Id.* at 635, 558 A.2d at 790.

The court, therefore, concluded that section 11-108 of the Md. Cts. & Jud. Proc. Code Ann. is constitutional as applied to a wrongful death action. *Id.* at 638, 558 A.2d 793. Yet, this is probably the first of many state tests to challenge the constitutionality of Maryland's cap. The holding, however, dealt only with the cap as applied to a statutorily created action. Thus, although the court implied that the cap would be constitutional if applied to any personal injury action, the issue has yet to be decided.

—Thomas J. S. Waxter, III



**In Memoriam**

**JULIUS ISAACSON**

In his prologue to the *Canterbury Tales*, Chaucer introduced one of his characters with this couplet:

“Sownynge in moral vertu was his speche,  
And gladly wolde he lerne and gladly teche.”

Chaucer may just as easily have been describing Dean Emeritus Julius Isaacson. This gentle scholar passed away September 23, 1989. Forever educating himself, he was as much a presence in the law library as any first year student.

Dean Isaacson helped found the Mount Vernon School of Law in 1935. He taught there until he became its dean in 1954. When Mount Vernon merged with the University of Baltimore in 1970, he became the dean emeritus.

During his long association with the school, he was awarded several honors including the university's Mount Vernon Award, Outstanding Faculty Member Award, and Outstanding Instructor Award.

The university has lost not only a teacher, but one of its most devoted students, and one of its most cherished friends.

Editors and Staff of the *Law Forum*



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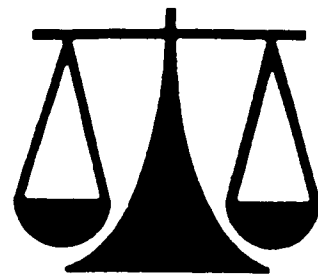
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